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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/458,179 11/19/99 BURKE

E DWE/BURKE#1

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PM82/0919

AIR MAIL

EXAMINER

GREEN, B	
ART UNIT	PAPER NUMBER

3628
DATE MAILED:

09/19/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/458,179

Applicant(s)

Examiner

Group Art Unit

3628

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 7/16/01 and 7/16/01
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1, 6-10, 12-15, 17-19 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1, 6-10, 12-15, 17-19 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____.

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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Drawings

1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on July 10, 2001 have been received.

The proposed drawing correction to figure 1 has been approved. The proposed drawing correction to figure 2 has been disapproved since the addition of element (37) to the figure is considered to be new matter. The addition of new figure 6 has been disapproved since the addition of member (74,76) is considered to be new matter.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the plastic container having a mast receptacle must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Specification

3. The amendment filed July 10 and July 16, 2001 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: stating on page 4, four lines from the bottom "base 11 by way of concealed clamps (37)" is new matter. Page 5, line 14, "Similarly,to the frame or tub base" is considered to be new matter. Page 6, "Referring to figure 6 the mast receptacle 76" is considered to be new matter.

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Applicant is required to cancel the new matter in the reply to this Office action.

Claim Rejections - 35 USC § 112

4. Claims 1,6-10,12-15, and 17-19 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The specification fails to disclose how the bottom rim (26) is attached to frame (12).

Claims 1,6-10,12-15, and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 5-6 are indefinite since it is not clear what elements are part of the vertical support means. The mast (18) and the rods (20) are required to maintain the display surface in a tensioned state. The rods (20) are not vertical. Claim 12, line 1 is indefinite since it is not clear whether the mast is part of the vertical support means defined in claim 1.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who

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has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

6. Claims 1,9, and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by LaMotte (U.S. Patent No. 6,012,688).

LaMotte shows in figures 17a-21 a display emblem having a tensioned outer surface forming a three-dimensional enclosure, first mounting attachment means (236,238,240,242), second mounting attachment means (236a,238a,240a,242a), and substantially vertical support means (shown in dotted lines). In regard to claim 17, as broadly defined, one of the adjacent structures shown in figures 18 or 19 is considered to be the base.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaMotte (U.S. Patent No. 6,012,688) in view of Noffsinger (U.S. Patent No. 4,875,302).

LaMotte does not disclose the type of material used to form the display surface. LaMotte does not disclose making the surface from a cloth fabric. Noffsinger discloses in column 3, lines 34-44, the idea of making a tensioned sign from a cloth fabric. In view of the teachings of

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Noffsinger it would have been obvious to one in the art to modify LaMotte by making the display surface out of a cloth fabric since this would create a more durable and better tensioned surface. In regard claim 7, the idea of knitting cloth is well known and would have been obvious to one skilled in the art since this would allow the display surface to be created in a more aesthetically pleasing manner. In regard to claim 8, it would have been obvious to one in the art to make the fabric cloth with polypropylene since this would make the cloth more durable and weather resistant.

9. Claims 10,18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaMotte (U.S. Patent No. 6,012,688) in view of Strom (U.S. Patent No. 4,885,858).

LaMotte discloses the applicant's basic inventive concept except for making the display surface in the form of a drinking cup. Strom shows in figures 1-5 the idea of making display surfaces in the imitation form of drinking devices such as bottles and cans. In view of the teachings of Strom it would have been obvious to one in the art to modify LaMotte by making the display surface in the form of a drinking cup since this would create a more amusing and attention attracting display device.

Applicant's arguments with respect to claims 1,6-10,12-15, and 17-19 have been considered but are moot in view of the new ground(s) of rejection.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Green whose telephone number is (703) 308-1011.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.


BRIAN K. GREEN
PRIMARY EXAMINER

bkg

Sept. 17, 2001